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6 **United States District Court**
7 **Central District of California**

8
9 JENNIFER PURCELL, individually and
10 on behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 SPOKEO, INC.,

14 Defendant.

Case No. 2:11-cv-06003-ODW(AGRx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS [87]**

15 **I. INTRODUCTION**

16 The Court recently lifted a lengthy stay of this class action after a successful
17 appeal in the now-consolidated case *Robins v. Spokeo, Inc.*, No. 10-cv-5306-
18 ODW(AGRx) (“*Robins* Action”). Here, Plaintiff Jennifer Purcell alleges that
19 Defendant Spokeo, Inc. violated the Fair Credit Reporting Act (“FCRA”), 15 U.S.C.
20 § 1681 *et seq.*, by publishing inaccurate personal information about Purcell and the
21 purported class. Spokeo runs a website that collects and aggregates information about
22 individuals and then offers the information for sale. The Ninth Circuit ruled on the
23 *Robins* appeal earlier this year, and Spokeo moved to dismiss Purcell’s Second
24 Amended Complaint (“SAC”) after this Court lifted the stay. For the reasons
25 discussed below, the Court **GRANTS IN PART** and **DENIES IN PART** Spokeo’s
26 Motion to Dismiss.¹ (ECF No. 87.)

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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 II. FACTUAL BACKGROUND

2 Purcell is an Illinois resident. (SAC ¶ 4.) Spokeo—a corporation based in
 3 Southern California—is an Internet service provider that operates a search engine at
 4 <http://www.spokeo.com>. (*Id.* ¶ 2.) Spokeo collects personal information about
 5 individuals in the United States and then sells and distributes that information to
 6 employers, law-enforcement officials, and “virtually anyone else.” (*Id.* ¶¶ 2, 9.) The
 7 information collected includes addresses, phone numbers, gender, relationship status,
 8 street-view images of property, income level, estimated home value, religious and
 9 political affiliations, and educational background. (*Id.* ¶¶ 12, 17.)

10 But Purcell alleges that Spokeo takes minimal steps to ensure that the
 11 information it collects and disseminates is accurate. (*Id.* ¶¶ 11–17.) According to
 12 Purcell, the information is often inaccurate. (*Id.*) For example, Spokeo’s profile of
 13 her lists an incorrect address and phone number and includes inaccurate information
 14 about her age, wealth, marital status, religious and political affiliations, and
 15 educational background. (*Id.* ¶ 17.) Purcell further alleges that Spokeo makes it
 16 difficult for individuals to request that inaccurate profiles be removed by requiring
 17 email addresses and other corroborating information. (*Id.* ¶ 27.) Purcell also alleges
 18 that instead of removing a profile after a request has been made, Spokeo simply
 19 publishes the new information that was supplied. (*Id.*)

20 Purcell initiated this action in the Northern District of California on
 21 September 3, 2010. (ECF No. 1.) The case was transferred to this Court in July 2011.
 22 (ECF Nos. 46, 48.) One of the reasons for the transfer was the case’s similarity to the
 23 *Robins* Action that was already before this Court. Both cases are class actions against
 24 Spokeo for alleged violations of the FCRA. But in addition to the FCRA claim,
 25 Purcell’s SAC also includes claims for unjust enrichment; violation of the Illinois
 26 Uniform Deceptive Trade Practices Act (“IUDTPA”), 815 Ill. Comp. Stat. 510/1–7;
 27 and declaratory judgment and injunctive relief. (ECF No. 64.)

28 / / /

On September 9, 2011, the Court dismissed the *Robins* Action, finding that the plaintiff lacked Article III standing to bring his FCRA claim. (*Robins* Action, ECF No. 66.) That decision was appealed to the Ninth Circuit and overturned. The Ninth Circuit held that merely alleging a violation of a federal statute that provides for statutory damages—like the FCRA—is sufficient to confer Article III standing.² *Robins v. Spokeo, Inc.*, 742 F.3d 409, 413–14 (9th Cir. Feb. 4, 2014).

A motion to dismiss, raising the same issue of Article III standing, was pending in this action at the time that the *Robins* Action went up on appeal. (ECF No. 66.) The Court stayed the case pending the *Robins* appeal. After the Ninth Circuit decision earlier this year, the case was reopened and consolidated with the *Robins* Action for discovery and all pretrial purposes. (ECF Nos. 84, 90.) In addition, Spokeo filed the present Motion to Dismiss, which is now before the Court for decision. (ECF No. 87.)

III. LEGAL STANDARD

A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a dismissal motion, a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The determination whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. A court is generally limited to the

² Spokeo has petitioned the Supreme Court for a writ of certiorari on the issue of Article III standing under the FCRA.

1 pleadings and must construe all “factual allegations set forth in the complaint . . . as
 2 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
 3 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
 4 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
 5 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

6 As a general rule, a court should freely give leave to amend a complaint that has
 7 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when
 8 “the court determines that the allegation of other facts consistent with the challenged
 9 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
 10 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d
 11 1122, 1127 (9th Cir. 2000).

12 IV. DISCUSSION

13 Spokeo moves to dismiss Purcell’s claims for violation of the IUDTPA, unjust
 14 enrichment, and equitable relief on several distinct grounds. In addition, Spokeo
 15 disputes Article III standing under the FCRA. The Court addresses Spokeo’s
 16 arguments with respect to each of Purcell’s claims below.

17 A. Article III Standing Under the FCRA

18 The Court turns first to Article III standing under the FCRA. As in the *Robins*
 19 Action, where the factual allegations are nearly identical, Spokeo contends that
 20 Purcell fails to meet the requirements for Article III standing. (Mot. 1:10–2:2, 14:8–
 21 16:11.) But Spokeo acknowledges that this Court is bound by the Ninth Circuit’s
 22 decision in the *Robins* Action, and thus raises the argument largely to preserve the
 23 issue for appeal. Based on Ninth Circuit precedent, the Court **DENIES** Spokeo’s
 24 Motion to Dismiss with respect to Article III standing under the FCRA.³ *See Robins*,
 25

26 ³ Spokeo also contends that it is not a consumer-reporting agency and thus not subject to the FCRA.
 27 Moreover, even if it were a consumer-reporting agency, Spokeo argues that it is immune from suit
 28 under the Communications Decency Act. But, in light of this Court’s rulings in the *Robins* Action,
 Spokeo expressly states that it is not moving to dismiss on these grounds and instead preserves these
 arguments for an appropriately timed summary-judgment motion. (Mot. 2:3–7.)

1 742 F.3d at 413–14 (holding that merely alleging a violation of a federal statute that
2 provides for statutory damages is sufficient for Article III standing).

3 **B. Illinois Uniform Deceptive Trade Practices Act**

4 Spokeo moves to dismiss Purcell’s IUDTPA claim on multiple grounds. First,
5 Spokeo argues that Purcell’s claim is not subject to the IUDTPA, which primarily
6 focuses on trademark-infringement-like conduct between competitors. Next, Spokeo
7 argues that the IUDTPA claim fails because Purcell’s allegations are insufficient to
8 allege likelihood of confusion and future harm as required under the law.
9 Furthermore, Spokeo argues that it is exempted from liability under a publisher
10 exemption in the IUDTPA.

11 The IUDTPA contains a list of deceptive trade practices—eleven specific
12 activities and a final catch-all provision. 815 Ill. Comp. Stat. 510/2(a). Purcell’s
13 claim is premised on one of the specifically prohibited activities as well as the catch-
14 all provision, which read as follows:

15 A person engages in a deceptive trade practice when, in the course of his
16 or her business, vocation, or occupation, the person: . . .

17 (2) causes likelihood of confusion or of misunderstanding as to the
18 source, sponsorship, approval or certification of goods or services; . . .

19 (12) engages in any other conduct which similarly creates a likelihood of
20 confusion or misunderstanding.

21 815 Ill. Comp. Stat. 510/2(a).

22 According to Spokeo, Purcell’s allegations do not fall within the scope of the
23 IUDTPA, which is generally limited to trademark-infringement-like claims. Spokeo
24 points to the language similar to trademark-infringement claims such as “likelihood of
25 confusion.” Spokeo also provides ample case law where IUDTPA claims are brought
26 in conjunction with intellectual-property claims. (Mot. 6:25–9:27.) But Purcell
27 argues that Spokeo impermissibly seeks to narrow the scope of the IUDTPA and that
28 consumer claims like Purcell’s are permitted under the statute. (Opp’n 5:11–8:4.)

1 “The purpose of the [IUDTPA] is to stem unfair competition and the deceptive
 2 trade practices singled out can be classed roughly into either misleading trade
 3 identification or false and deceptive advertising.” *Barliant v. Follet Corp.*, 483
 4 N.E.2d 1312, 1317 (Ill. App. Ct. 1985); *see also Juno Online Servs. v. Juno Lighting,*
 5 *Inc.*, 979 F. Supp. 684, 692 (N.D. Ill. 1997) (“It is clear from the language of the
 6 statute and the accompanying comments . . . that the aim of this law is to prevent
 7 misrepresentation via trademark or advertising.”). Moreover, the IUDTPA is “not
 8 intended to be a consumer protection statute.” *Disc Jockey Referral Network, Ltd. v.*
 9 *Ameritech Pub. of Ill.*, 596 N.E.2d 4, 9 (Ill. App. Ct. 1992). Nevertheless, despite its
 10 primary focus on acts between competitors, “injunctive relief is obtainable by an
 11 individual consumer where that consumer can allege facts that he would likely be
 12 damaged by the defendant’s conduct in the future.” *Smith v. Prime Cable of Chi.*, 658
 13 N.E.2d 1325, 1337 (Ill. App. Ct. 1995); *see also Robinson v. Toyota Motor Credit*
 14 *Corp.*, 735 N.E.2d 724, 735 (Ill. App. Ct. 2000), *rev’d in part on other grounds by*
 15 *Robinson v. Toyota Motor Credit Corp.*, 775 N.E.2d 951 (Ill. 2002).

16 While Spokeo’s arguments regarding the IUDTPA’s relationship to trademark
 17 infringement and competitor claims are persuasive, there is a clear line of authority
 18 that suggests a narrow application of the IUDTPA in consumer actions such as
 19 Purcell’s. The IUDTPA’s only remedy is injunctive relief. *See Smith*, 658 N.E.2d at
 20 1317; 815 Ill. Comp. Stat. 510/3. Accordingly, Purcell must be able to allege a
 21 likelihood of harm in the future due to Spokeo’s conduct.

22 Most consumer actions under the IUDTPA fail at this point. *See Robinson*, 735
 23 N.E.2d at 735 (finding that since plaintiffs’ car leases had expired, any harm suffered
 24 with respect to the leases had already occurred and that plaintiffs can avoid the leases
 25 in the future since they are now armed with knowledge of the problems); *Smith*, 658
 26 N.E.2d at 1337 (dismissing IUDTPA claim because plaintiffs could not show
 27 likelihood of future harm in case where plaintiffs alleged that they were overcharged
 28 for the cost of a live concert they attended due to its less-than-promised length). But

1 Purcell's action differs from *Robinson* and *Smith* because she alleges that Spokeo is
 2 still posting inaccurate information, and requests to remove profiles with inaccurate
 3 information have been unsuccessful in some instances. (SAC ¶¶ 23, 27, 75–80.)
 4 Purcell also argues that consumers like her must continue to purchase their own
 5 profiles to confirm their accuracy because they otherwise have no access to them. (*Id.*
 6 ¶¶ 30–32.) Unlike the car leases in *Robinson* and the concert tickets in *Smith*, based
 7 on Purcell's allegations, she has no control over her profile on Spokeo's website.

8 While Spokeo contends that Purcell's allegations of future harm are insufficient
 9 and merely speculative (Mot. 10:10–20), the argument relies on a selective reading of
 10 the SAC. It is true that Purcell alleges that individuals may request removal of
 11 inaccurate profiles, but Purcell also alleges that Spokeo fails to fix inaccuracies.
 12 (SAC ¶¶ 23, 27.) In addition, rather than remove a profile, Purcell alleges that Spokeo
 13 will update the profile with information supplied by the individual requesting
 14 removal. (*Id.*) The Court is also unpersuaded by Spokeo's contention that Purcell has
 15 failed to show an inadequate remedy at law to permit injunctive relief. (*See*
 16 Mot. 10:21–11:2.) Purcell has alleged harm to her career, personal life, and financial
 17 standing. (SAC ¶¶ 17–20, 34, 80.) Reputational harm such as that alleged by Purcell
 18 is the proper subject of injunctive relief under the IUDTPA. *See DeVry Inc. v. Int'l*
 19 *Univ. of Nursing*, 638 F. Supp. 2d 902, 910–11 (N.D. Ill. 2009). The Court finds that
 20 Purcell has adequately alleged a likelihood of future harm under the IUDTPA to at
 21 least survive this Motion to Dismiss.

22 Spokeo argues that the IUDTPA claim should also be dismissed because Purcell
 23 cannot demonstrate likelihood of confusion, which is an element of her IUDTPA
 24 claim. (Mot. 8:10–9:12); 815 Ill. Comp. Stat. 510/2(a)(2), (12). Spokeo contends that
 25 likelihood of confusion under the IUDTPA is identical to that of trademark
 26 infringement, and since Purcell's claims are unrelated to trademark infringement, this
 27 element cannot be met. (*See* Mot. 9:8–12.) But the Court has already addressed this
 28 issue, pointing out that consumer actions are permitted under the IUDTPA. Thus,

1 Spokeo's reliance on case law defining the IUDTPA'S likelihood-of-confusion
 2 standard in cases involving unfair competition and trademark infringement is
 3 misplaced. *See, e.g., Hooker v. Columbia Pictures Indus., Inc.*, 551 F. Supp. 1060,
 4 1064 (N.D. Ill. 1982) (stating that likelihood of confusion has the same meaning in
 5 unfair competition cases as it does under the UDTPA).

6 Spokeo also seeks judicial notice of portions of its website, particularly its
 7 "Terms of Use." (ECF No. 88, Ex. B.) According to Spokeo, the Terms of Use
 8 ensure that users of the website know that there are no guarantees about the accuracy
 9 of the information Spokeo compiles. (Mot. 8:20–27.) This, Spokeo contends,
 10 eliminates any likelihood of confusion alleged by Purcell. (*Id.*) However, while the
 11 Court may be able to take judicial notice of portions of Spokeo's website because they
 12 exist in the public domain, these portions of the website and their content only serve
 13 to create a dispute of fact that is clearly inappropriate for resolution on a motion to
 14 dismiss. *See Lee*, 250 F.3d at 688. The Court finds that Purcell's allegations are
 15 sufficient to establish likelihood of confusion at the pleadings stage.

16 Finally, with respect to the IUDTPA, Spokeo argues that it is exempt from
 17 liability as a publisher of information on the Internet. (Mot. 11:3–14.) The IUDTPA
 18 does have an exemption for "publishers, broadcasters, printers or other persons
 19 engaged in the dissemination of information or reproduction of printed or pictorial
 20 matter *without knowledge of its deceptive character . . .*" 815 Ill. Comp. Stat.
 21 510/4(2) (emphasis added). There is no real dispute that Spokeo is a publisher of
 22 information. (SAC ¶¶ 9–10.) But to fall within the exemption, Spokeo must also
 23 publish information "without knowledge of its deceptive character." 815 Ill. Comp.
 24 Stat. 510/4(2). Despite Spokeo's arguments to the contrary in the Motion, Purcell
 25 alleges that Spokeo knows that there are inaccuracies in the information it publishes.
 26 (*See SAC ¶ 78 ("Spokeo knows that information it collects, markets, publishes and/or*
 27 *sells is inaccurate . . .").*) Accordingly, based on the SAC, the Court finds that the
 28 publisher exemption does not bar Spokeo from liability under the IUDTPA.

1 For the reasons discussed above, the Court **DENIES** Spokeo's Motion to
 2 Dismiss with respect to Purcell's IUDTPA claim.

3 **C. Unjust Enrichment**

4 Spokeo next moves to dismiss Purcell's unjust-enrichment claim. Unjust
 5 enrichment requires a plaintiff to prove "receipt of a benefit and unjust retention of the
 6 benefit at the expense of another." *Lectrodryer v. SeoulBank*, 77 Cal. App. 4th 723,
 7 726 (2000); *see also Peterson v. Cellco P'ship*, 164 Cal. App. 4th 1583, 1593 (2008).⁴
 8 Spokeo argues that Purcell has failed to allege a benefit that she has conferred on
 9 Spokeo and has failed to demonstrate that retention of any benefit is unjust.
 10 (Mot. 12:4–28.)

11 In her Opposition, Purcell argues that the benefit conferred on Spokeo is
 12 actually a savings of the expenses associated with compliance with the FCRA.
 13 (Opp'n 14:5–15.) According to Purcell, Spokeo has been saved the expense of
 14 providing her with a copy of her profile, the sources used to create her profile, and the
 15 names of customers who purchased the profile as well as other information. (*Id.*) But
 16 while "[a] benefit is conferred not only when one adds to the property of another, but
 17 also when one saves the other from expense or loss," *Ghirardo v. Antonioli*, 14 Cal.
 18 4th 39, 51 (1996) (internal citations omitted), the Court is unpersuaded that Purcell's
 19 allegations are sufficient to sustain her unjust-enrichment claim.

20 California courts have stated that "[t]here is no freestanding cause of action for
 21 'restitution' in California." *Munoz v. MacMillan*, 195 Cal. App. 4th 648, 661 (2011);
 22 *see also Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010) ("There is
 23 no cause of action in California for unjust enrichment. Unjust enrichment is
 24 synonymous with restitution."). But the inquiry goes beyond that broad statement
 25

26 ⁴ In the Motion, Spokeo indicates that it is not clear whether Purcell's unjust-enrichment claim is
 27 brought under Illinois or California law. (Mot. 11 n.3.) But the elements for unjust enrichment are
 28 essentially the same. *See Gagnon v. Shickel*, 983 N.E.2d 1044, 1052 (Ill. App. Ct. 2012). Given the
 similarities between the two states' laws, choice-of-law principles dictate the application of
 California law. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2011).

1 because courts in California do recognize unjust-enrichment claims when a plaintiff
 2 has properly pleaded a theory of quasi-contract—that the defendant has been unjustly
 3 enriched at the expense of the plaintiff. *See, e.g., In re TFT-LCD (Flat Panel)*
 4 *Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 4345435, at *3–4 (N.D. Cal. Sept. 15,
 5 2011) (allowing unjust enrichment claim to proceed where the plaintiff invoked a
 6 valid theory of recovery). Essentially, the inquiry is whether the plaintiff merely
 7 alleges restitution as a remedy or a separate theory of liability.

8 Here, the Court finds that Purcell’s unjust-enrichment allegations are
 9 inextricably intertwined with her FCRA claim and do not give rise to a separate theory
 10 of quasi-contract. The alleged benefit that Purcell conferred upon Spokeo does not
 11 exist without the FCRA. Purcell and Spokeo have no affiliation or connection to
 12 invoke a quasi-contract theory of liability. Moreover, the Court notes the danger of
 13 opening the floodgates. As Spokeo points out in its Motion, if a claim for unjust
 14 enrichment lies wherever inaccurate information is posted on the Internet, courts
 15 would be inundated with such cases. (Mot. 12:25–26.)

16 For these reasons, the Court **GRANTS** Spokeo’s Motion to Dismiss with
 17 respect to Purcell’s unjust-enrichment claim **WITHOUT LEAVE TO AMEND**.⁵

18 **D. Declaratory and Injunctive Relief**

19 Finally, Spokeo argues that Purcell’s separate claim for declaratory and
 20 injunctive relief should be dismissed as redundant and because equitable relief is not
 21 available under the FCRA. (Mot. 13:2–14:6.)

22 To extent this claim is premised on Spokeo’s alleged violation of the FCRA,
 23 equitable relief is not available. *See, e.g., Gauci v. Citi Mortg.*, No. 11-cv-01387-
 24 ODW(JEMx), 2011 WL 3652589, at *3 (C.D. Cal. Aug. 9, 2011) (dismissing claim
 25 for equitable relief because private parties may not obtain such relief under the

26
 27 ⁵ Purcell also argues that her unjust-enrichment claim is tied to California’s recognition of a right to
 28 publicity. (Opp’n 14:16–15:4.) Spokeo has benefitted at Purcell’s expense by failing to compensate
 her for use of her name and likeness. (*Id.*) But the Court pays short shrift to this argument because
 such allegations are entirely absent from the SAC and inconsistent with the thrust of her claims.

1 FCRA); *Yasin v. Equifax Info. Servs., LLC*, No. C-08-1234 MMC, 2008 WL
2 2782704, at *2–4 (N.D. Cal. July 16, 2008) (same).

3 Moreover, as stated above, the only remedy available under the IUDTPA is
4 injunctive relief. The Court finds that Purcell’s separate claim for declaratory and
5 injunctive relief is merely duplicative of the remedy available under Purcell’s
6 IUDTPA claim, and thus unnecessary. *See United States v. Washington*, 759 F.2d
7 1353, 1357 (9th Cir. 1985) (“Declaratory relief should be denied when it will neither
8 serve a useful purpose in clarifying and settling the legal relations in issue nor
9 terminate the proceedings and afford relief from uncertainty and controversy faced by
10 the parties.”). Declaratory relief is an available remedy, but it need not be brought as
11 a separate claim. *See* 28 U.S.C. § 2201 (creation of remedy).

12 The Court therefore **GRANTS** Spokeo’s Motion to Dismiss with respect to the
13 separate claim for declaratory and injunctive relief.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES**
16 **IN PART** Defendant’s Motion to Dismiss. (ECF No. 87.) Spokeo shall answer the
17 Complaint within 14 days of the date of this Order.

18 **IT IS SO ORDERED.**

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20 August 25, 2014

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23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**
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